



United States
Department of
Agriculture

Food and
Nutrition
Service

Mountain
Plains
Region

1244 Speer Boulevard, Suite 903
Denver, Colorado 80204-3585

Reply to
Attn of: SP-05-04

NOV 16 2004

Subject: Food Service Management Company Contracts – Renewal and Rebidding

To: STATE AGENCY DIRECTORS – Colorado ED, Iowa, Kansas, Missouri ED, Montana OPI,
(Special Nutrition Programs) Nebraska, North Dakota, South Dakota, Utah and Wyoming

We have received a inquiry, at the National Office level, from a Food Service Management Company (FSMC) representative concerning our memoranda, SP-04-22, CACFP-735, SFSP-503, dated July 23, 2004, "Reaffirming FNS' Position on Rebates, Discounts, and Other Applicable Credits in Cost Reimbursable Contracts". The FSMC requested confirmation that: "(1) states and School Food Authorities (SFAs) are not required under federal law to include contractual language regarding rebates, discounts, and other applicable credits, (2) that if they choose to do so, they may include such provisions in their contacts with FSMCs, and (3) if states or SFAs decide to include such provisions in their contracts, it would be lawful as a matter of USDA/FNS regulation and policy for them to do so upon the next Request for Proposal (RFP) cycle, rather than seek to impose such new provisions in mid-cycle contract renewals or through the issuance of an unscheduled new RFP."

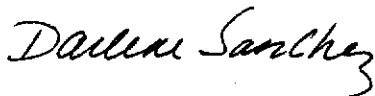
We previously addressed (1) and (2) in memoranda, SP 04-22, dated July 23, 2004, "Reaffirming FNS' Position on Rebates, Discounts, and Other Applicable Credits in Cost Reimbursable Contracts" (noted above) and SP 03-17, dated May 28, 2003, "Applicability of Federal Requirements to School Food Service Procurements". In response to the item (3), we provided the FSMC representative with the following response:

"The National School Lunch Program regulations (7 Code of Federal Regulations Part 210) at §210.16(d) limits the duration of contracts between a SFA and a FSMC to one year, with options for yearly renewals, not to exceed 4 additional years. The option to renew does not create a multi-year contract between the SFA and the FSMC because each renewal results in a separate one-year contract. Since the decision to renew the contract is an affirmative decision that is made by both parties to the contract each year, either party, for any reason, may decide not to exercise the renewal option. An SFA that opts not to renew its FSMC contract must either conduct a new procurement or self-operate its food service.

As long as the SFA has conducted a proper procurement and both parties have met their obligations under the terms of the contract, the renewal option is generally exercised, except where prohibited by applicable law or regulations. Should either party determine revisions to the contract are needed, non-material changes are generally made when the contract is renewed. Usually, an SFA will incorporate changes resulting from its experience under the current contract and FNS and State agency guidance, recommendations and policy changes in its next invitation for bid/request for proposal. Neither party may make or impose material changes to an existing contract during the contract year or as part of the annual contract renewal process. All material changes require rebidding.

Because the annual renewal provision is an option and not a guarantee or obligation of either party, FNS cannot require or recommend that an SFA exercise the renewal option in lieu of conducting a new procurement. Likewise there is no requirement to recompet a otherwise legal contract until all renewal options have been exercised."

If you have any questions, please contact our office at (303) 844-0354.



DARLENE SANCHEZ
Regional Director
Special Nutrition Programs